IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5803 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RANJITSINH NATHUSINH CHAVDA

Versus

MANAGING DIRECTOR

Appearance:

1. Special Civil Application No. 5803 of 2002

MR GK RATHOD for Petitioner No. 1

MR ASHISH M DAGLI for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/10/2002

ORAL JUDGEMENT

Rule. Mr Dagli waives service of rule on behalf of the respondents.

2. The petitioner was appointed as a daily rated driver by the respondent-Corporation after following the selection procedure. The petitioner was thereafter made permanent on the post of driver by order dated 14-10-1999 w.e.f. 1-9-1999 in the pay scale of Rs.800-2389. While on duty, the petitioner suffered a paralytic stroke on 27-3-2000. The petitioner took treatment for the same initially at Vijapur his home town and thereafter the petitioner was admitted to the Civil Hospital at Ahmedabad as an indoor patient and again the petitioner took the treatment at the Jamnabai General Hospital, Baroda. The Jamnabai Hospital issued Certificate dated 8-12-2000 regarding permanent unfitness of the petitioner for the job of a driver. On 22-1-2001, the said Hospital issued another certificate clarifying that the petitioner had became permanently unfit for the job of a driver but the petitioner was in a position to work as a peon, that is, for light duty work. The said certificate is produced at Annexure "C" to the petition. However, the respondent-Corporation by letter dated 5-1-2002 required the petitioner to resign from service. The petitioner requested the Corporation to give light duty job to the petitioner as per the re-categorisation formula provided in the general standing orders of the respondent-Corporation. Since there was no reply from the respondent-Corporation, the petitioner filed the present petition in May, 2002. However, before this Court issued notice to the respondents in June, 2002, the Divisional Controller of the S.T. Corporation, Baroda issued the termination order on the ground that the petitioner was permanently unfit for the post of driver and that the petitioner was not eligible to get the benefit of clause No.37(7) of the settlement dated 21-12-1989. Hence the petitioner has also challenged the said termination order by amendment which has been granted.

3. At the hearing, Mr Rathod for the petitioner has submitted that there is a settlement between the ST Corporation and employees' Union regarding the benefits to be given to the employees who are rendered unfit on account of accident while the employees are on duty. The relevant sub-clause (7) of clause 37 (as translated) reads as under:-

> "In case the employee is rendered unfit on account of injuries sustained in an accident while on duty, the employee shall be offered alternative equal or lower post if the employee is qualified for such post. When such employee

is employed on such lower post, there shall be no reduction in his basic pay in the original post. If necessary, such difference shall be protected by treating it as personal pay and if the employee is not willing to do such offered work, his services shall be terminated."

The learned counsel for the petitioner further points out that in a similar case, the respondent-Corporation has offered alternative job to one Shri Jamabhai V Desai in Sabarkantha district as per the order dated 29-12-2001, the copy whereof is annexed at Annexure"B" to the petition. It is submitted that the aforesaid employee had suffered the injuries/ailment while at his residence whereas in the petitioner's case, the petitioner suffered the paralytic stroke while on duty.

4. There is no affidavit-in-reply on behalf of the respondent-Corporation but Mr Dagli for the respondent-Corporation has opposed the petition and submitted that the impugned order is passed after considering the provisions of the settlement.

5. However, the order does not disclose as to why the petitioner's case is not covered by clause 37(7) of the settlement dated 21-12-1989 though the said sub-clause, quoted hereinabove, is clearly applicable to the petitioner. It is not necessary that there should be an accident in the sense of a motor vehicle accident before the employee can claim the benefit of the said sub-clause. What is meant by accident is some event for which an employee is not responsible and which happens all of a sudden. A paralytic stroke can, therefore, certainly be considered as an accident in the sense that when the petitioner was discharging his duties as a driver and all of a sudden, the petitioner received such a stroke which rendered him unfit for the post of a driver. The certificate at Annexure "C" clearly indicates that the petitioner is fit for light duty work.

6. In a similar set of circumstances, this Court had allowed the petition being Special Civil Application No.604 of 1999. The order of the learned Single Judge was also confirmed by the Division Bench by dismissing LPA No.511 of 1999 on 6-12-2000. Similar order was passed by another Division Bench on 12-11-1997 in LPA No.1420 of 1997.

7. Mr Dagli has, however, submitted that the certificate produced by the petitioner shows that the petitioner is unfit for the driver's duty and is fit for

the light duty work but it does not indicate as to for which post the petitioner is fit.

The submission made on behalf of the respondent-Corporation cannot be accepted. The Hospital or the Doctor issuing the certificate would naturally be in a position to state that the concerned employee is not fit for driver's duty and that he is fit for light duty work. It is then for the Corporation to find out as to what kind of duty or which post can be assigned to the employee.

8. In view of the aforesaid discussion, the petition is allowed. The respondents are directed to give the petitioner the benefit of re-categorisation as per clause 37(7) of the settlement dated 21-12-1989 within one month from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

9. The petition is accordingly allowed.
Rule is made absolute with no order as to costs.

(M.S. Shah,J)
zgs/-